

## **REMARKS**

### **I. Preliminary Remarks**

Claims 1-4, 9 and 11 are currently pending with this amendment. For the Examiner's convenience, Appendix A hereto lists the currently pending claims as they would appear after entry of this amendment.

### **II. Remarks Concerning Rejections**

In the Office Action November 29, 2002, the Examiner rejected claim 1 and dependent claims thereto under U.S.C. § 112, second paragraph, as being indefinite for the use of the abbreviation of BPI and suggested that Applicant recite the full name of the protein. The Examiner also rejected claim 10 under 35 U.S.C. §101 as being the "same invention" as claim 4 of U.S. Patent No. 5,912,228. Finally, the Examiner rejected claims 1-4 and 9-11 under the judicially created doctrine of obviousness-type double patenting.

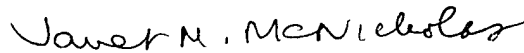
In an effort to expedite prosecution, Applicant has (a) amended claim 1 to recite the full name of the protein bactericidal/permeability-increasing protein (BPI), (b) cancelled claim 10, (c) filed concurrently herewith a Terminal Disclaimer. With Applicant's amendments herein and Terminal Disclaimer, the rejections under §112, §101 and under the judicially created doctrine of obvious-type double patenting are moot and may properly be withdrawn.

## CONCLUSION

In view of the amendments and remarks made herein and the Terminal Disclaimer enclosed herewith, all bases for rejection of claims 1-4, 9 and 11 under 35 U.S.C. §112, second paragraph, §101 and the judicially created doctrine of obviousness-type double patenting have been mooted and may be properly withdrawn. The claims as amended herein are in condition for immediate allowance and Applicant respectfully requests passage of this case to issue. The Examiner is invited to telephone the undersigned to discuss any questions or be of any assistance to the Examiner in the reconsideration and allowance of this case.

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Respectfully submitted,



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**APPENDIX A**  
**Currently pending claims 1-4, 9 and 11 of U.S. Application No. 09/696,709**  
**with entry of this Amendment**

1. In a therapeutic composition comprising a bactericidal/permeability-increasing protein product and a stabilizing polyoxypropylene-polyoxyethylene block copolymer (poloxamer) surfactant, the improved composition comprising a bactericidal-activity-enhancing poloxamer surfactant.

2. The therapeutic composition of claim 1 further comprising EDTA.

3. The improved composition of claim 1 wherein the bactericidal-activity-enhancing poloxamer surfactant is selected from the group consisting of poloxamer 333, poloxamer 334, poloxamer 335, and poloxamer 403.

4. The therapeutic composition of claim 3 further comprising EDTA.

5/ 9. A composition for inhibiting bacterial and fungal growth comprising a BPI protein product and a bacterial and fungal growth-inhibiting enhancing poloxamer surfactant.

6/ 11. The composition of claim 9 wherein the bacterial and fungal growth-inhibiting enhancing poloxamer surfactant is selected from the group consisting of poloxamer 333, poloxamer 334, poloxamer 335, and poloxamer 403.